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13 PATAGONIA, INC.

14 **UNITED STATES DISTRICT COURT**
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
16 **WESTERN DIVISION – LOS ANGELES**

17 PATAGONIA, INC.,

18 Plaintiffs,

19 v.

20 SUMMER MCCLENDON,

21 Defendant.

Case No. 2:18-cv-03868 FMO (RAOx)

**FINAL JUDGMENT AND
PERMANENT INJUNCTION**

22 Plaintiff Patagonia, Inc. (“Patagonia”) has filed a Complaint alleging
23 counterfeiting, trademark infringement, unfair competition, and copyright
24 infringement under federal law against co-defendant Summer McClendon. Ms.
25 McClendon has imported, promoted, distributed, offered, and sold apparel products,
26 bearing one or more identical or substantially indistinguishable imitations of
27 Patagonia’s federally registered marks (the “Counterfeit Products”) using social
28 media, including Facebook user accounts or Facebook Groups. Ms. McClendon
consents to entry of judgment and permanent injunction to resolve this matter.

The Court now enters final judgment based upon the following undisputed





facts. Each party has waived the right to appeal from this final judgment and each party will bear its own fees and costs in connection with this action.

I. FACTS AND CONCLUSIONS

A. This Court has subject matter jurisdiction over this lawsuit and personal jurisdiction over Ms. McClendon. Venue is proper in this Court.

B. Patagonia owns numerous registrations for the PATAGONIA trademark, and for its distinctive logo depicting the Mt. Fitz Roy skyline (the “Fitz Roy Design”), for a wide ranging assortment of products. Among these are the following U.S. trademark registrations:

Trademark	Reg. No. / Reg. Date	Goods	Date of First Use
PATAGONIA	1189402/ February 9, 1982	Men’s and Women’s Clothing-Namely, Sweaters, Rugby Shirts, Walking Shorts, Trousers, Jackets, Mittens, Hoods and Rainwear.	08/1974
	1294523/ September 11, 1984	Men’s, Women’s and Children’s Clothing- Namely, Jackets, Pants, Vests, Gloves, Pullovers, Cardigans, Socks, Sweaters, Underwear, Shirts, Shorts, Skirts and Belts	08/1974- 1981
	1775623/ June 8, 1993	Luggage back packs, and all-purpose sports bags	08/1988
PATAGONIA	1811334/ December 14, 1993	Luggage, back packs, fanny packs and all- purpose sport bags, foot- wear, ski bags and ski gloves	08/1990
PATAGONIA	2260188/ 	Computerized on-line	10/1995



Trademark	Reg. No. / Reg. Date	Goods	Date of First Use
	July 13, 1999	ordering activities in the field of clothing and accessories; Providing information in the field of technical clothing and accessories for use in recreational, sporting and leisure activities; providing information in the field of existing and evolving environmental issues	
PATAGONIA.COM	2392685/ October 10, 2000	On-line retail store and mail order services featuring technical clothing, footwear, and accessories; Computer services in the nature of on-line information related to the environment and clothing	10/1995
PATAGONIA	2662619/ December 17, 2002	Retail store services featuring clothing, footwear, luggage and a wide variety of sporting goods and accessories	06/1986

These registrations for the PATAGONIA mark and logos are in full force and effect. The registrations have become incontestable under 15 U.S.C. § 1065. Collectively, these marks, Patagonia's other registered trademarks, and its common law marks are referred to as the "PATAGONIA trademarks." A color image of the Fitz Roy Design follows:



1 C. Ms. McClendon imported, promoted, distributed, offered, and sold 338
2 units of the Counterfeit Products, and collected \$1,352.00 in profits from those
3 sales.

4 **II. PERMANENT INJUNCTION AND AWARD**

5 It is hereby ordered and adjudged as follows:

6 A. Ms. McClendon shall pay the sum of \$1,352.00 to Patagonia within
7 thirty (30) days of entry of this Judgment. Payment shall be made by certified
8 check, payable to “Patagonia, Inc.” and delivered to Patagonia’s counsel of record.

9 B. Commencing as of the “So Ordered” date of this Final Judgment and
10 Permanent Injunction, Ms. McClendon, her agents, employees, attorneys,
11 successors, assigns, affiliates, joint ventures, and any person(s) in active concert or
12 participation with her, and/or any person(s) acting for, with, by, through, or under
13 her control who receive actual notice of this Order, are hereby permanently enjoined
14 and restrained, anywhere in the world, directly or indirectly, from doing, authorizing
15 or procuring any persons to do any of the following:

16 1. Manufacturing, producing, sourcing, importing, selling, offering
17 for sale, distributing, advertising, or promoting any goods or services that bear
18 reproductions of the PATAGONIA Trademarks;

19 2. Manufacturing, producing, sourcing, importing, selling, offering
20 for sale, distributing, advertising, or promoting any goods or services that display
21 any words or symbols that so resemble the PATAGONIA trademarks as to be likely
22 to cause confusion, mistake, or deception, on or in connection with any product that
23 is not authorized by or for Patagonia;

24 3. Using any word, term, name, symbol, device, or combination
25 thereof that causes or is likely to cause confusion, mistake, or deception as to the
26 affiliation or association of Ms. McClendon or her products with Patagonia or as to
27 the origin of Ms. McClendon’s goods, or any false designation of origin, false or
28



1 misleading description or representation of fact, or any false or misleading
2 advertising;

3 4. Further infringing the rights of Patagonia in and to its
4 PATAGONIA trademarks, or otherwise damaging Patagonia's goodwill or business
5 reputation;

6 5. Further infringing Patagonia's copyright rights, including its
7 rights in the Fitz Roy Design, or otherwise infringing any of Patagonia's rights
8 under the Copyright Act and any other source of federal or state law;

9 6. Otherwise competing unfairly with Patagonia in any manner; and

10 7. Assisting, aiding or abetting any person or entity engaging in or
11 performing any act prohibited by this paragraph.

12 C. This is a final judgment as to all claims asserted against Ms.
13 McClendon related to the 338 Counterfeit Products, sold prior to the date of entry of
14 this Final Judgment and Permanent Injunction. Both parties shall bear their own
15 costs.

16 D. If Ms. McClendon is found to be in contempt of this injunction by a
17 court of law, she agrees that she will pay to Patagonia a liquidated penalty in an
18 amount no less than \$15,000.00 as liquidated damages, plus any other non-
19 duplicative penalties or damages arising from the contempt.

20 E. If Patagonia commences an action for enforcement of this Judgment,
21 the prevailing party shall be awarded reasonable attorneys' fees and costs from the
22 other party for both the action enforcing this Judgment and the underlying litigation.

23
24 Dated: August 3, 2018

25
26 _____/s/_____
27 Hon. Fernando M. Olguin
28 United States District Judge

